

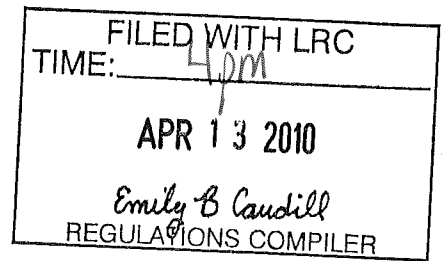
## **301 KAR 1:140**

### **Special commercial fishing permit for Kentucky and Barkley lakes**

This administrative regulation establishes the procedures for taking rough fish during the special net commercial fishing season from both Kentucky and Barkley lakes.

### **Significant Changes**

The amendment relaxes the requirements on the size of mesh that can legally be used to harvest rough fish from Kentucky and Barkley lakes during the special net commercial fishing season. Special net commercial fishing permittees will now be allowed to fish gill nets with mesh sizes greater than 6 inches.



1 TOURISM, ARTS AND HERITAGE CABINET

2 Kentucky Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

5 RELATES TO: KRS 150.010(32), 150.450(2)[, EO 2008-516]

6 STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department

8 to regulate the size or type of devices and methods used to take fish and wildlife, including the

9 places where they may be taken. KRS 150.175(3), (4) authorizes the department to promulgate

10 administrative regulations regarding the issuance of commercial fishing licenses, commercial

11 fishing gear, and commercial fishing gear tags. This administrative regulation is necessary to

12 establish restrictions on the use of gill and trammel nets at Kentucky and Barkley Lakes.

13 [~~wildlife, including rough fish and the places where they may be taken. EO 2008-516, effective~~

14 ~~June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and~~

15 ~~Heritage Cabinet. This administrative regulation is necessary to specify restrictions on the use of~~

16 ~~gill and trammel nets.]~~

17 Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of

18 a net.

19 (2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.

20 (3) "Permit" means a special commercial fishing permit.

21 (4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.

(5) "Rough fish" is defined by KRS 150.010(32).

(6) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) ~~The [For the 2008-2009 special commercial fishing season, the]~~ department shall not issue more than twenty-five (25) permits.

(3) ~~[(a)]~~ A permit holder shall:

(a) Submit a completed permit application to the department, along with permit fees established

~~[1. Submit a completed permit application to the department, along with permit fees as stipulated]~~ in 301 KAR 3:022, on or before November 1 to retain the permit privilege; and

(b) [2.] Ensure that mailed permit applications are postmarked on or before November 1.

(4) [(b)] The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is [(e) New permits shall not be issued until the total number of permits has been reduced to] less than twenty-five (25).

(6) A lottery drawing shall be used to select new permittees if the total number of permits is [(d)

~~A lottery drawing shall be used to select new permittees once the number of permits has been reduced to]~~ less than twenty-five (25).

(a) A person applying for a vacant permit shall:

1. Submit to the department a completed Application for a Special Commercial Fishing Permit by November 1, along with the appropriate fee established in 301 KAR 3:022.

2. Ensure that a mailed permit application is postmarked on or before November 1.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 3. Permit Requirements. (1) A person shall possess and carry a valid permit and a

commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley Lakes; and

2. In the portions of Kentucky and Barkley Lakes open to commercial fishing as established in 301 KAR 1:150.

(b) If transporting a gill net or trammel net; and

(c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

(a) Tag a gill net or trammel net as established in KRS 150.175(4);

(b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:

1. A whip set may have a minimum bar mesh size of three (3) inches; and

2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley Lakes, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;

(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(e) Not leave whip sets unattended;

(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;

(g) Not dispose of any commercially caught rough fish at public boat launch areas; and

(h) Not harvest paddlefish at both Kentucky and Barkley Lakes during the special commercial

fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or

(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

(a) Maintain an accurate record of daily fishing activity; and

(b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 4. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).

~~[1. A person wishing to apply for a vacant permit shall:~~

~~a. Submit a completed Application for a Special Commercial Fishing Permit to the department, along with permit fees, as stipulated in 301 KAR 3:022, on or before November 1 of the fishing season to be included in the lottery drawing; and~~

~~b. Ensure that mailed permit applications are postmarked on or before November 1.~~

~~2. More than seven (7) of the maximum number of permits issued shall not be nonresident permits.~~

~~Section 3. A person shall have in possession a valid permit and a commercial fishing license while using a gill net or a trammel net to take rough fish:~~

~~(1) From November 1 through March 31 at both Kentucky and Barkley lakes; and~~

~~(2) In the portions of Kentucky and Barkley lakes open to commercial fishing as specified in 301 KAR 1:150.~~

~~Section 4. A person using a gill net or a trammel net in the waters specified in Section 3 of this administrative regulation shall:~~

~~(1) Before fishing and after meeting requirements in Section 2 of this administrative regulation, apply for a permit by submitting a completed Application for a Special Commercial Fishing Permit that shall be provided by the department;~~

~~(2) Have the permit in possession while:~~

~~(a) Fishing with a gill net or a trammel net;~~

~~(b) Transporting a gill net or a trammel net; or~~

~~(c) Selling fish taken with a gill net or a trammel net;~~

~~(3) Tag a gill net or a trammel net as specified in KRS 150.175(4);~~

~~(4) Not use a gill net or a trammel net with a bar mesh size smaller than three and five tenths (3.5) inches or larger than four and five tenths (4.5) inches, except:~~

~~(a) A whip set may have a minimum bar mesh size of three (3) inches; and~~

~~(b) Beginning on November 15 and running through March 31 at both Kentucky and Barkley lakes, gill and trammel nets with a bar mesh size larger than four and five tenths (4.5), but less than or equal to six (6) inches may be used in stationary sets only;~~

~~(5) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;~~

- ~~(6) Tend each net, except whip sets, at least once every twenty-four (24) hours;~~
- ~~(7) Not leave whip sets unattended;~~
- ~~(8) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;~~
- ~~(9) Not dispose of any commercially caught rough fish at public boat launch areas; and~~
- ~~(10) Not harvest paddlefish at both Kentucky and Barkley lakes during the special commercial fishing season that are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.~~

~~Section 5. The permit holder may be accompanied by two (2) unlicensed helpers, who shall be:~~

- ~~(1) In the same boat with the permit holder while fishing with a gill net or a trammel net; or~~
- ~~(2) Accompanied by the permit holder while transporting or selling fish taken under the permit.~~

~~Section 6. The permit holder shall:~~

- ~~(1) Maintain an accurate record of daily fishing activity; and~~
- ~~(2) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form that is provided by the department.~~

~~Section 7. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be permitted to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Roe-bearing Fish Harvester's Permit.~~

~~(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all commercial rose fish harvester permit reporting requirements as stipulated in 301 KAR 1:155, Section 4(4)(d)4. and 5.]~~

~~Section 5. Permit Suspension, Revocation, [8. Permit Revocation] and Renewal.~~

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) If a third or subsequent time ~~[The third and subsequent times]~~ during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for ~~[the permit for a period of two (2) years, of a person]~~ the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting ~~[of]~~ prohibited species of fish;

(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly ~~[nonreporting or]~~ falsifying commercial harvest data.

(4) A person whose permit has been revoked or not renewed shall be eligible to enter the lottery drawing ~~[described in Section 2(2)(d) of this administrative regulation]~~ following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.

(5) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit is:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

Section 6. [9.] Incorporation by Reference. (1) The following material is incorporated by reference:

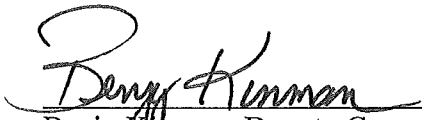
(a) Application for a Special Commercial Fishing Permit, 2007;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2008; and

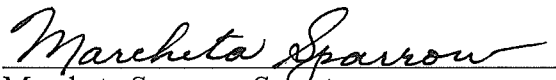
(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved by the Fish and Wildlife Commission December 4, 2009

A handwritten signature in cursive script, reading "Benjy Korman".

Benjy Korman, Deputy Commissioner, for  
Dr. Jonathan Gassett, Commissioner  
Department of Fish and Wildlife Resources

A handwritten signature in cursive script, reading "Marcheta Sparrow".

Marcheta Sparrow, Secretary  
Tourism, Arts and Heritage Cabinet

04-08-10

Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 21, 2010, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by June 1, 2010.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Rose Mack  
Kentucky Department of Fish and Wildlife Resources  
1 Sportsman's Lane  
Frankfort, Kentucky 40601  
(502) 564-7109, Ext. 441 FAX (502) 564-9136

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

301 KAR 1:140 Special commercial fishing permit.

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking rough fish during the special net commercial fishing season from both Kentucky and Barkley lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fishery resources and regulate the taking of rough fish from Kentucky and Barkley lakes by use of gill nets and trammel nets during the special net commercial fishing season.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the requirements for commercial fishing during the special net commercial fishing season at Kentucky and Barkley lakes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment relaxes the requirements on the size of mesh that can legally be used to harvest rough fish from Kentucky and Barkley lakes during the special net commercial fishing season. Special net commercial fishing permittees will now be allowed to fish gill nets with mesh sizes greater than 6 inches.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give special net commercial fishing permittees the ability to selectively harvest larger legal sized paddlefish. The ability to use the larger mesh gill nets will reduce catch and release mortality of the smaller sized paddlefish as these smaller fish are less likely to be caught in the larger mesh nets.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently only 25 special net permittees that may be affected by this amendment. Not all of the permittees report paddlefish harvest from Kentucky and Barkley lakes during the special net commercial fishing season.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take

to comply with this administrative regulation or amendment: If desired, a special net permittee will now be allowed to use gill nets with mesh sizes that are larger than 6 inches. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs incurred to the permit holders as a result of complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, permit holders will be able to harvest larger paddlefish from Kentucky and Barkley lakes during the special net commercial fishing season. The use of the larger mesh gill nets will reduce mortality of smaller paddlefish.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost to the agency as a result of this amendment.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase fees or funding to implement this change.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied because all special commercial fishing permittees are treated equally.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 301 KAR 1:140

Contact Person: Rose Mack

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No \_\_\_\_\_

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues will be generated during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenues will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: